

**AGREEMENT BETWEEN  
CITY OF SUNNYVALE AND SUNNYVALE GYMNASTICS CLUB**

THIS AGREEMENT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and SUNNYVALE GYMNASTICS CLUB ("CLUB").

WHEREAS the CITY desires to support independent organizations providing services beneficial to the Community; and

WHEREAS CLUB wishes to provide non-profit services to Sunnyvale youth in the form of competitive gymnastics programs not otherwise offered or duplicated by the City of Sunnyvale; and

WHEREAS CLUB wishes to use various facilities maintained by the City of Sunnyvale for that purpose on a priority basis; and at a cost reduced from that dictated by established CITY facility rental rates, and;

NOW THEREFORE, in accordance with the City's Relationships with Outside Groups Policy, the CITY OF SUNNYVALE and the SUNNYVALE GYMNASTICS CLUB enter into this agreement.

**1. Obligations of CITY OF SUNNYVALE**

CITY shall provide CLUB first priority reservation, after CITY scheduled activities and consistent with CITY policy on facility use, of the Community Center's Indoor Sports Center and Raynor Activity Center Gymnastics Building, only for the purpose of practices and regular CLUB activities.

CITY shall make priority reservations one year in advance, each April, based upon the GROUP's previous year's permits.

CITY shall provide priority reservation of the Indoor Sports Center main floor limited to two days for meets/exhibitions and one night for a celebration.

CITY shall provide CLUB use of the Community Center's neighborhood room--one day a year in December for the purpose of a holiday banquet and use of the Murphy Park building--one day a year for an annual banquet.

CITY shall provide at no charge to CLUB one night at the Indoor Sports Center from 9:00 p.m. until 7:00 a.m. for an annual celebration/sleepover.

CITY shall make priority reservations for the Indoor Sports Center, and Community Center's Neighborhood Room and Murphy Park Building by January 1 of prior year and notify CLUB of their availability. Any changes in the availability of the facilities compared to the prior year will be noted by CITY

and shared with CLUB. Any reservation for a facility that is not needed by the CLUB will be released and made available for public use.

CITY shall allow CLUB to reserve the Indoor Sports Center up to 7 days in advance on an ongoing basis. Specific schedules for use of the sites will be determined by CITY in conjunction with CLUB.

CITY shall notify CLUB three (3) months in advance of dates the Indoor Sports Center Gymnastics Room and the Raynor Activity Center Gymnastics Building will be available for CLUB use during the course of the year.

CITY shall notify CLUB if permitted facilities are or will need to be closed for any reason during the season, and attempt to accommodate the CLUB if possible, and provide alternate facilities if available.

CITY shall charge CLUB on the fifteenth (15<sup>th</sup>) of each month for the previous month's permits.

CITY shall provide CLUB the use of storage space at the Indoor Sports Center (approximately 100 square feet) and the Raynor Activity Center (approximately 100 square feet). In addition, all CLUB owned equipment listed in Appendix A shall be allowed to be stored at either the Indoor Sports Center or the Raynor Activity Center.

CITY shall list CLUB contact information in the Department of Parks and Recreation Activity Guide.

CITY shall provide CLUB up to 6 keys to each of the facilities that they have reserved.

CITY shall allow CLUB to use all CITY owned gymnastics equipment in all facilities that are reserved.

## **2. Obligations of SUNNYVALE GYMNASTICS CLUB**

CLUB shall comply with all CITY rental use policies and leave facilities in a condition that is the same as or better than they found it after each day's use.

CLUB shall make all special requests in writing for CITY approval, including but not limited to, requests for additional storage space, improvements or modifications of any kind to CITY facilities and the placement of banners advertising CLUB activities.

CLUB shall provide written notice to CITY at least 30 days in advance of the release of any permitted facility time or to request additional permitted facility time.

CLUB shall repair/replace or pay for damage to City facilities or equipment furnished by CITY, at the discretion of the CITY, if damage occurred during use by CLUB.

CLUB shall provide rental fees to use the Indoor Sports Center main floor at three dollars (\$3) per hour; Indoor Sports Center gymnastics room/mezzanine at two dollars (\$2) per hour; Community Center's Neighborhood Room at one dollar (\$1) per hour; Murphy Park Building at one dollar (\$1) per hour and for the Raynor Activity Center at two dollars (\$2) per hour. Club shall provide rental fees to use the Indoor Sports Center, including the main floor, gymnastics room and mezzanine area, at three dollars (\$3) per hour for the purposes of meets/exhibitions for two days a year. These fees will be reviewed annually and revised if warranted.

CLUB shall provide payment to the CITY within two weeks of receipt of the invoice. CLUB shall provide rental fees for the use of all facilities outside of this agreement according to the CITY's Facility Rental Rate Schedule and shall be made directly with reservations staff at the time the reservation is made.

CLUB shall be responsible for storage, care, custody or control of equipment, materials or furnishings owned by CLUB.

CLUB shall provide all activities and programs associated with the planning, organizing, scheduling and hosting of CLUB meets, practices and associated activities at no cost to the City.

CLUB shall provide proof of non-profit status, and shall remain non-profit during the life of this agreement.

CLUB shall maintain a membership of at least 51% Sunnyvale residents for both participants and Board of Directors. CLUB shall provide CITY with a roster, noting the residency of every participant and board member, each year no later than March 1. A request for a special exception to this requirement must be submitted in writing to City for approval if Sunnyvale residency of membership is below 51%.

CLUB shall utilize concession facilities only for the purpose of sale of concessions, food, beverages or merchandise and only during times CLUB has permitted use of the associated facility.

CLUB shall reimburse cost to CITY to replace keys and re-key facilities under the use of CLUB, when necessary for security purposes.

CLUB shall allow CITY to use all CLUB owned gymnastics equipment that is stored in CITY facilities as noted on Exhibit 1 of this agreement. CLUB is responsible for the inspection and maintenance of all equipment owned by CLUB and shall remove any equipment owned by CLUB that is determined to be unsafe. CLUB shall remove all of CLUB equipment when this agreement is terminated.

### **3. Conflicts of Interest**

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CLUB shall not accept employment or an obligation which is inconsistent or incompatible with CLUB obligations under this Agreement.

### **4. Compliance with Laws**

- a) SUNNYVALE GYMNASTICS CLUB shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin, or any other basis to the extent prohibited by federal, state or local law.
- b) SUNNYVALE GYMNASTICS CLUB shall comply with all federal, state, county and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting performance of the Agreement.

### **5. Indemnity**

SUNNYVALE GYMNASTICS CLUB agrees to indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of CLUB, its officers, employees, agents, CLUB subgroups or any officer, agent or employee thereof in relation to CLUB's performance under this Agreement.

### **6. Insurance**

SUNNYVALE GYMNASTICS CLUB shall, at own cost, take out and maintain without interruption during the life of this Agreement in such form and with a company or companies satisfactory to the CITY policies of the following types of insurance:

(a) Combined single limit coverage applying to bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than One Million Dollars (\$1,000,000) providing coverage on an "occurrence" basis and not an "accident" basis; provided, however, as follows:

- (1) CITY shall be named as an additional insured in all insurance policies;
- (2) A contractual liability endorsement shall be included in each insurance policy, extending coverage to include liability assumed under paragraph 5 above; and,

(b) Worker's compensation insurance and employer's liability insurance for all employees of Licensee.

**7. CITY OF SUNNYVALE Representative**

The Director of Sunnyvale Parks and Recreation or his/her designee shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

**8. SUNNYVALE GYMNASTICS CLUB Representative**

The President of CLUB shall represent CLUB in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CLUB pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CLUB representative.

**9. Notices**

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY:

City Manager  
CITY OF SUNNYVALE  
P. O. Box 3707  
Sunnyvale, CA 94088-3707  
(408) 730-7480

To CLUB: Diane LoPresto, President  
SUNNYVALE GYMNASTICS CLUB  
1083 Cornflower  
Sunnyvale, CA 94086  
(408) 243-4426

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation or a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

#### **10. Assignment**

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

#### **11. Duration of Agreement**

This Agreement shall continue until such time as terminated in accordance with section 12 below.

#### **12. Termination**

(a) If SUNNYVALE GYMNASTICS CLUB defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CLUB.

(b) Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon ninety (90) days' written notice to the other party. If CITY terminates the Agreement; CITY shall reimburse CLUB for its expenses directly related to facility fees that were paid by CLUB for use that has not yet occurred.

**13. Entire Agreement; Amendment**

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

**14. Miscellaneous**

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager Date

APPROVED AS TO FORM:

SUNNYVALE GYMNASTICS CLUB ("CLUB")

\_\_\_\_\_  
City Attorney

By Diane LoPresto Nov. 2, 2004  
Diane LoPresto Date  
President

**Exhibit 1**

Sunnyvale Gymnastics Club Inventory 12/03

**EXHIBIT 1****SUNNYVALE GYMNASTICS CLUB INVENTORY 12/03**

Equipment Item	Purchase/Replacement list description match	Owned By	Location
Uneven Bars	U Base Quick Release (women) (D&G invoice)	SGC	Raynor
High Bar	Quick Release Bar ONLY (D&G invoice)	SGC	Raynor
Style C Floor Plates (4)	Style C Floor Plates (4) (D&G invoice)	SGC	Raynor
Over Head Belts (2)	Deluxe Cable Tightener (2) (D&G invoice)	SGC	Raynor
Tumble Table	Made by Club	SGC	Raynor
Wall Mirrors (2)	no record of ownership	SGC	Raynor
Spotting Blocks (4)	Canyon Blocks Mat (3) (D&G invoice) 4th?	SGC	Raynor
Sting Mats (2)	no record of ownership	SGC	Raynor
New Mat Covers (2)	Covers for 6x12x12" (2) (D&G invoice)	SGC	Raynor
Floor Bars (2)		SGC	Raynor
Tumbling Beams (safety)	no record of ownership	SGC	Raynor
Floor Tumbling Strip (bought & made)	no record of ownership	SGC	Raynor
Carpet (Entire Gym Area)	no record of ownership	SGC	Raynor
Arrow Board		SGC	Raynor
Mini Tramp	black model	SGC	Raynor
Vault Table	Elite Vault Table (D&G invoice)	SGC	ISC
Vault Runway	Trocellen 8'x70'x2" (D&G invoice)	SGC	ISC
Spring Floor (bought & made)	City owns the mat and carpet (Replace. Sched)	SGC	ISC
Spring Floor (bought & made)	City owns the mat and carpet (Replace. Sched)	SGC	ISC
Spring Floor (bought & made)	City owns the mat and carpet (Replace. Sched)	SGC	ISC

The information on these items were supplied by Gymnastics Club past president Karen Hardy.12/03

SGC = Sunnyvale Gymnastics Club

Raynor = Raynor Activity Center Gymnastics Building

ISC = Indoor Sports Center (Community Center)